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Stefano Cerbini

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466

7590

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EXAMINER

CHOI, PETER Y

ART UNIT

PAPER NUMBER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,833	<b>Applicant(s)</b> CERBINI ET AL.	
	<b>Examiner</b> Peter Y. Choi	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-21 and 26-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-21 and 26-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**FINAL ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 27-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 27-36, claims 27 and 28 recite that the outer layer has a pore size “low enough to prevent passage of liquids and microorganisms”. It is unclear how low “low enough” entails as pore size corresponds to various liquids and microorganisms without providing adequate guidance as to what pore size is suitable as “low enough”.

Regarding claim 30, the claim recites that the garment exhibits a “very high level of protection” and “outstanding softness, drapeability and comfort”. It is unclear what properties are intended as the claimed property limitations are subjective and the disclosure does not provide adequate guidance or values which would distinguish a “very high level of protection” from a lower level of protection and which would distinguish an “outstanding softness, drapeability and comfort” from a lesser level of softness, drapeability and comfort.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 15, 16 and 26-30 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,855,999 to McCormack.

Regarding claims 15, 16, 26, and 27, McCormack teaches a gown, jacket or trousers, suitable as protective clothing against biological agents and exhibiting very high level of protection against the penetration of liquids and microorganisms, mechanical resistance properties as well as outstanding softness, drapeability and comfort, comprising a laminate of an inner layer of non-woven polypropylene with an outer layer of polyethylene film, a unit weight ratio between polypropylene and polyethylene ranging from 70:30 to 50:50 (see entire document including column 1 lines 16-32, column 3 line 21 to column 4 line 59, column 4 lines 3-38, column 8 lines 17-34, column 9 lines 50-61, column 12 line 53 to column 13 line 32).

Regarding claim 16, the ratio in unit weight between polypropylene and polyethylene ranges from 65:35 to 55:45 (column 8 lines 17-34, column 12 line 53 to column 13 line 32).

Regarding claim 26, the inner layer provides a barrier against liquids and microorganisms, is physiologically safe, and is breathable (column 3 line 21 to column 4 line 59).

Regarding claim 27, as best Examiner can determine, the outer layer is microporous with a pore size low enough to prevent passages of liquids and microorganisms which allow moisture to pass on a molecular level (column 3 line 21 to column 4 line 59).

Regarding claims 28-30, McCormack teaches a protective garment, comprising a laminate of an inner layer of nonwoven polypropylene with an outer layer of polyethylene film, a unit weight ratio between polypropylene and polyethylene ranging from 70:30 to 50:50, wherein

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the inner layer provides a barrier against liquids and microorganisms, is physiologically safe, and is breathable, and the outer layer is microporous with a pore size low enough to prevent passages of liquids and microorganisms which allow moisture to pass on a molecular level (see entire document including column 1 lines 16-32, column 3 line 21 to column 4 line 59, column 4 lines 3-38, column 8 lines 17-34, column 9 lines 50-61, column 12 line 53 to column 13 line 32).

Regarding claim 29, the protective garment is a gown, jacket or trousers (column 1 lines 16-32).

Regarding claim 30, as best Examiner can determine, the protective garment is protective clothing against biological agents and exhibits a very high level of protection against the penetration of liquids and microorganisms, mechanical resistance properties as well as outstanding softness, drapeability and comfort (column 3 line 21 to column 4 line 59).

### ***Response to Arguments***

5. Applicant's arguments filed October 19, 2007, have been fully considered but they are not persuasive. Applicant argues that there is no teaching or inference in McCormack of a ratio.

Applicant cites *Harries v. Air King Products Co.*, 86 USPQ 57 (2d Cir. 1950), in support.

Examiner respectfully disagrees. To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Additionally, when, as by a recitation of ranges or otherwise, a claim covers several compositions, the claim is anticipated if one of them is in the prior art.

As set forth above, McCormack teaches that the film may have a weight per unit area of less than 35 grams per square meter or desirably less than 18 grams per square meter (column 8 lines 17-34). Although McCormack does not specifically teach a ratio between the film and the polypropylene non-woven, McCormack does teach an example wherein the polypropylene nonwoven weighs 17 grams per square meter (column 12 lines 53-64). Therefore, since McCormack teaches the range of the weight of the film to be less than 35 grams per square meter, and expressly teaches that the polypropylene nonwoven is contemplated such that it weigh 17 grams per square meter, the ratio appears to be inherently disclosed in the reference and a ratio within the claimed ratio is disclosed in the reference.

Regarding the cited case, *Harries*, the case involves litigation between two parties and is not directed to the prosecution of the patents which involve early electron discharge tubes. The analysis set forth by Judge Learned Hand involves the decision by the lower court regarding patent validity and patent infringement. It should be noted that a patent validity analysis is not identical to a patent prosecution analysis as patent validity is an element of an infringement claim or defense for a patent already granted based on the prosecution history, whereas patent prosecution compiles the record involved in determining whether a patent should be granted based on the prior art.

Specifically regarding the segment of the decision which Applicant relies on, Applicant's reasoning that "deriving a ratio from individual components or measurements has been found to be impermissible" does not appear to be supported by *Harries*. In the *Harries* case, the issue regarding the ratio revolved around a discussion as to whether the inclusion of "ratio", not in the claims but added as an amendment to the specification, was permissible, even though the

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specification as originally disclosed did not teach such a ratio. In finding the patent valid, the Court held that the plaintiff, *Harries*, claimed specifically “long streams” and not various ratios, such that “we should not be justified in taking the figures, even those accompanying the original specifications, to indicate that the ratio of length to cross-section was a part of the invention” (86 USPQ at 60). Contrary to Applicant’s assertion, *Harries* held that the specification may be amended to include a “ratio” even though that ratio was not necessarily disclosed in the specification, but the scope of the patent is limited to that which was originally disclosed in the specification. Therefore, in an *infringement* analysis, a patentee may not extrapolate inventions from a single patent that are not within the scope of the patented invention, as a basis for infringement.

Applicant in the presently examined application appears to argue that *Harries* supports the contention that Examiner may not rely on prior art to teach a ratio in determining if a claim is anticipated, if the prior art does not expressly teach the ratio. However, as set forth above, *Harries* only supports the contention that “ratio” may be included in a patent even though it was not disclosed in the specification as originally filed, but the scope and validity of the patent will be limited. The section in Applicant’s Remarks of October 19, 2007, attributed to Judge Hand which Applicant recites, appears to state that “ratio” cannot be found to be within the scope of an invention since the ratio of length to cross-section was not part of the invention (*see Harries*, “[t]he claims in suit of the first and third patents must therefore be confined to ‘deflectable jets of comparatively great length’”) (*Id.* at 59). *Harries* does not appear to support the premise that during patent prosecution, an Examiner may not rely on prior art to teach a ratio which is not expressly taught by the prior art but is inherent to that disclosed in the prior art.

***Claim Rejections - 35 USC § 102/103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 15-20 and 26-35 are rejected under 35 U.S.C. 102(b) as being anticipated by, or alternatively under 35 U.S.C. 103(a) as obvious over, USPN 5,589,249 to Bodford.

Regarding claims 15-20, 26 and 27, Bodford teaches a gown, jacket or trousers, suitable as protective clothing against biological agents and exhibiting very high level of protection against the penetration of liquids and microorganisms, mechanical resistance properties as well as outstanding softness, drapeability and comfort, comprising a laminate of an inner layer of non-woven polypropylene with an outer layer of polyethylene film, a unit weight ratio between polypropylene and polyethylene ranging from 70:30 to 50:50 (see entire document including column 2 lines 61-67, column 3 lines 6-21, column 4 lines 23-51, column 7 line 37 to column 8 line 31, column 8 lines 56-67, column 9 lines 10-37, column 12 lines 7-24, Table II).

Regarding claim 16, the ratio in unit weight between polypropylene and polyethylene ranges from 65:35 to 55:45 (column 9 lines 10-37, Table II).

Regarding claim 17, the thickness of the material ranges between 101.6 and 1041.4 microns, and the unit weight ranges between 55 and 75 g/m<sup>2</sup> (column 3 lines 6-21, column 7 line 37 to column 8 line 31, Table II).



Regarding claim 18, the inner layer of nonwoven polypropylene has a thickness ranging between 76.2 and 1016 microns and unit weight ranging between 35 and 45 g/m<sup>2</sup> and the outer polyethylene film has a thickness ranging between 30 and 70 microns and unit weight ranging between 20 and 30 g/m<sup>2</sup> (column 3 lines 6-21, column 7 line 37 to column 8 line 31, Table II).

Regarding claim 19, the thickness of the material ranges between 101.6 and 1041.4 microns and the unit weight ranges between 60.0 and 67.5 g/m<sup>2</sup> (column 3 lines 6-21, column 7 line 37 to column 8 line 31, Table II).

Regarding claim 20, the inner layer of nonwoven polypropylene has a thickness ranging between 76.2 and 1016 microns and unit weight ranging between 37.5 and 40.0 g/m<sup>2</sup> and the outer polyethylene film has a thickness ranging between 40 and 60 microns and unit weight ranging between 22.5 and 27.5 g/m<sup>2</sup> (column 3 lines 6-21, column 7 line 37 to column 8 line 31, Table II).

Regarding claim 26, the inner layer provides a barrier against liquids and microorganisms, is physiologically safe, and is breathable (column 2 lines 61-67, column 7 line 38 to column 8 line 67, column 12 lines 7-24).

Regarding claim 27, as best Examiner can determine, the outer layer is microporous with a pore size low enough to prevent passages of liquids and microorganisms which allow moisture to pass on a molecular level (column 2 lines 61-67, column 7 line 38 to column 8 line 67, column 12 lines 7-24).

Regarding claims 28-35, Bodford teaches a protective garment, comprising a laminate of an inner layer of nonwoven polypropylene with an outer layer of polyethylene film, a unit weight ratio between polypropylene and polyethylene ranging from 70:30 to 50:50, wherein the inner

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layer provides a barrier against liquids and microorganisms, is physiologically safe, and is breathable, and the outer layer is microporous with a pore size low enough to prevent passages of liquids and microorganisms which allow moisture to pass on a molecular level (see entire document including column 2 lines 61-67, column 3 lines 6-21, column 4 lines 23-51, column 7 line 37 to column 8 line 31, column 8 lines 56-67, column 9 lines 10-37, column 12 lines 7-24, Table II).

Regarding claim 29, the protective garment is a gown, jacket or trousers (column 7 line 38 to column 8 line 67).

Regarding claim 30, as best Examiner can determine, the protective garment is protective clothing against biological agents and exhibits a very high level of protection against the penetration of liquids and microorganisms, mechanical resistance properties as well as outstanding softness, drapeability and comfort (column 2 lines 61-67, column 7 line 38 to column 8 line 67, column 12 lines 7-24).

Regarding claim 31, the ratio in unit weight between polypropylene and polyethylene ranges from 65:35 to 55:45 (column 9 lines 10-37, Table II).

Regarding claim 32, the thickness of the material ranges between 101.6 and 1041.4 microns, and the unit weight ranges between 55 and 75 g/m<sup>2</sup> (column 3 lines 6-21, column 7 line 37 to column 8 line 31, Table II).

Regarding claim 33, the inner layer of nonwoven polypropylene has a thickness ranging between 76.2 and 1016 microns and unit weight ranging between 35 and 45 g/m<sup>2</sup> and the outer polyethylene film has a thickness ranging between 30 and 70 microns and unit weight ranging between 20 and 30 g/m<sup>2</sup> (column 3 lines 6-21, column 7 line 37 to column 8 line 31, Table II).

Regarding claim 34, the thickness of the material ranges between 101.6 and 1041.4 microns and the unit weight ranges between 60.0 and 67.5 g/m<sup>2</sup> (column 3 lines 6-21, column 7 line 37 to column 8 line 31, Table II).

Regarding claim 35, the inner layer of nonwoven polypropylene has a thickness ranging between 76.2 and 1016 microns and unit weight ranging between 37.5 and 40.0 g/m<sup>2</sup> and the outer polyethylene film has a thickness ranging between 40 and 60 microns and unit weight ranging between 22.5 and 27.5 g/m<sup>2</sup> (column 3 lines 6-21, column 7 line 37 to column 8 line 31, Table II).

In the event it is shown that Bodford does not disclose the claimed invention with sufficient specificity, the invention is obvious because Bodford discloses the claimed constituents and discloses that they may be used in combination based on the intended application.

### ***Response to Arguments***

8. Applicant's arguments filed October 19, 2007, have been fully considered but they are not persuasive. Applicant argues that Bodford fails to disclose the elements of independent claim 15 or the ratio between polypropylene and polyethylene. Applicant cites *Harries v. Air King Products Co.*, 86 USPQ 57 (2d Cir. 1950), in support. Additionally, Applicant argues that Bodford fails to disclose a two layer garment suitable for protection against biological agents.

Regarding Applicant's first argument, Examiner respectfully disagrees. To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that

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the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Additionally, when, as by a recitation of ranges or otherwise, a claim covers several compositions, the claim is anticipated if one of them is in the prior art.

As set forth above, Bodford teaches a laminate of an inner layer of nonwoven polypropylene (column 2 line 61 to column 3 line 21, column 7 lines 38-48), with an outer layer of polyethylene film (column 4 lines 23-51, column 7 lines 38-48). Although Bodford does not specifically teach a ratio between the film and the polypropylene nonwoven, Bodford does teach that the polypropylene nonwoven weighs 0.3-3.5 osy and optimally 1 osy or 1.5 osy (column 7 lines 49-65). Additionally, Example 1 teaches an embodiment wherein two identical films, are applied to the polypropylene nonwoven, with an adhesive, the adhesive add-on comprising 9 grams per square meter. As disclosed in Table II, the weight of the composite is 2.65 osy and therefore each of the films must weigh approximately 1.19 osy. Since Bodford teaches in Example 1 an embodiment comprising a polypropylene nonwoven weighing 1 osy, and each of the films weighs approximately 1.19 osy, the ratio of the nonwoven to one of the films appears to be disclosed in the reference.

For the reasons set forth above and not discussed here, Applicant's reliance on *Harries* is not persuasive.

Regarding Applicant's argument that Bodford fails to disclose a two layer garment suitable for protection against biological agents, Examiner respectfully disagrees. First, the claim language does not preclude additional elements to the structure, so long as the structural and compositional limitations of the claim are met. The claimed invention does not solely

consist of a two layer structure as Applicant's argue. Therefore, Applicant's arguments are not commensurate in scope with the claimed invention. Second, as set forth above, Bodford teaches a laminate of an inner layer of nonwoven polypropylene with an outer layer of polyethylene film which is suitable for protection against biological agents (column 12 lines 7-24). Additionally, Bodford appears to teach the claimed ratio throughout the disclosure including Example 1 and Table II. Therefore, Bodford teaches a substantially similar structure and composition as the claimed invention.

### ***Claim Rejections - 35 USC § 103***

9. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,865,926 to Wu in view of McCormack.

Regarding claims 15 and 16, Wu teaches a gown, jacket or trousers, suitable as protective clothing against biological agents and exhibiting very high level of protection against the penetration of liquids and microorganisms, mechanical resistance properties as well as outstanding softness, drapeability and comfort, comprising a laminate of an inner layer of nonwoven polypropylene with an outer layer of polyethylene film (see entire document including column 2 lines 2-29, column 3 line 2 to column 4 line 42).

Regarding claims 15 and 16, Wu does not appear to disclose that the unit weight ratio between polypropylene and polyethylene ranges from 70:30 to 50:50, or from 65:35 to 55:45. Since Wu is silent with regards to the weight of the microporous polyethylene film, it would have been necessary and thus obvious to look to the prior art for conventional weights of microporous polyethylene films. McCormack provides this conventional teaching showing that it

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is known in the garment art to use a microporous polyethylene film on a polypropylene nonwoven wherein the film weighs less than about  $35 \text{ g/m}^2$  (McCormack, column 1 lines 16-31, column 4 lines 3-11, column 8 lines 17-34). Therefore, it would have been obvious to one having ordinary skill in the garment art at the time the invention was made to make the microporous polyethylene film of Wu with the film weight as taught by McCormack, motivated by the expectation of forming the microporous polyethylene film and polypropylene nonwoven protective clothing which is soft and breathable.

10. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu in view of McCormack, as applied to claims 15 and 16, and further in view of Bodford.

Regarding claims 17-20, Wu in view of McCormack teaches that the unit weight of the material ranges between 55 and  $75 \text{ g/m}^2$  or 60.0 and  $67.5 \text{ g/m}^2$ , that the unit weight of the nonwoven polypropylene ranges between 35 and  $45 \text{ g/m}^2$  or 37.5 and  $40.0 \text{ g/m}^2$ , that the polyethylene film unit weight ranges between 20 and  $30 \text{ g/m}^2$  or between 22.5 and  $27.5 \text{ g/m}^2$ , and that the thickness of the polyethylene film ranges between 30 and 70 microns or between 40 and 60 microns (Wu, column 3 line 2 to column 4 line 42; McCormack, column 8 lines 17-34). However, Wu in view of McCormack does not appear to teach the claimed thickness of the nonwoven or the claimed thickness of the entire material. Since Wu in view of McCormack is silent with regards to the thickness of the material, it would have been necessary and thus obvious to look to the prior art for conventional thicknesses of composites comprising microporous polyethylene films laminated to a polypropylene nonwoven. Bodford provides this conventional teaching showing that it is known in the garment art to form garments comprising

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microporous polyethylene films laminated to a polypropylene nonwoven wherein the thickness of the nonwoven is 76.2-1016 microns (Bodford, column 3 lines 6-21, column 7 line 37 to column 8 line 31, Table II). Therefore, it would have been obvious to one having ordinary skill in the garment art at the time the invention was made to make the garment of Wu in view of McCormack with the nonwoven thickness as taught by Bodford, motivated by the expectation of successfully practicing the invention of Wu in view of McCormack. Additionally, the polypropylene nonwoven and polyethylene film composite would therefore have a thickness between 82.55 microns to preferably 1066.8 microns.

11. Claims 21 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack in view of EP 0360208 to Langley.

Regarding claims 21 and 36, McCormack does not appear to teach that the joints are made by heat welding. Since McCormack is silent with regards to the method of sealing the joints, it would have been necessary and thus obvious to look to the prior art for conventional methods. Langley provides this conventional teaching showing that it is known in the garment art to fabricate garments using a heat-sealing methods when the garments comprise a polyethylene film and a polypropylene nonwoven (page 3 lines 3-41). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the garment of McCormack from heat-sealing method of Langley, motivated by the expectation of using a suitable method for forming garments comprising a polyethylene film and polypropylene nonwoven.

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12. Claims 21 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodford in view of Langley.

Regarding claims 21 and 36, Bodford does not appear to teach that the joints are made by heat welding. Since Bodford is silent with regards to the method of sealing the joints, it would have been necessary and thus obvious to look to the prior art for conventional methods. Langley provides this conventional teaching showing that it is known in the garment art to fabricate garments using a heat-sealing methods when the garments comprise a polyethylene film and a polypropylene nonwoven (page 3 lines 3-41). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the garment of Bodford from heat-sealing method of Langley, motivated by the expectation of using a suitable method for forming garments comprising a polyethylene film and polypropylene nonwoven.

### ***Response to Arguments***

13. Applicant's arguments filed October 19, 2007, have been fully considered but they are not persuasive. Applicant argues that McCormack and Bodford do not teach or infer polymer ratios as discussed above. Examiner respectfully disagrees. As set forth above, McCormack and Bodford disclose each of the claimed ratios. Therefore, the claimed invention appears to be obvious over the combination of prior art references discussed above.



***Conclusion***

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER Y. CHOI whose telephone number is (571)272-6730. The examiner can normally be reached on Monday - Friday, 08:00 - 15:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T Piziali/  
Primary Examiner, Art Unit 1794

/Peter Y. Choi/  
Examiner, Art Unit 1794  
December 3, 2007